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# CASE

OF

JEAN BAPTISTE LAPORTE,

COMPRISING

A STATEMENT OF THE FACTS

CONNECTED WITH

HIS CLAIM UPON GOVERNMENT

TO A CERTAIN

BEACH LOT,

SITUATE AT

LANCE DES MERES, IN THE VICINITY OF QUEBEC,

And held in the Gift of the Crown.

1843.



PRINTED BY J. STARKE AND CO. MONTREAL.

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## INTRODUCTION.

THE truly extraordinary and protracted delays which, during a period of sixteen years, have taken place in the granting of Letters Patent by Government to Mr. JEAN BAPTISTE LAPORTE, for a certain Beach Lot, situate at *L'Ance des Mères*, in the vicinity of Quebec, would alone,—were there no other stronger and more powerful reasons, both in point of equity and justice, to be assigned,—have formed (as will be hereafter seen) a sufficient ground of complaint to have induced that individual to publish a statement of his case, and fully to make known the trying circumstances under which, for a series of years past, as well as at the present time, his interests have been made materially to suffer, in consequence of an unjust and vexatious opposition raised by *Third Parties* ;—and this, on his part, with the greater satisfaction, persuaded as he is that no disinterested or reasonable person can, after a perusal of it, be otherwise than convinced than any measure but the ample one of justice (to whatever quarter the blame may be imputed) has as yet been dealt out to him, although his rights, acknowledged at various times by Government, entitled him both to expect and receive the same at the award of the Crown.

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## STATEMENT OF FACTS.

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THE period at which Mr. Laporte took possession of the beach lot in question, namely, in the year 1816, found that property a perfect waste,—a barren spot composed of a *strata* of sand and ledges of rock, few or no habitations being erected on the place, no wharves built, and the waters of the river St. Lawrence, at high spring tides, washing to a considerable height the adjoining cliffs, the bases of which were formed by the beach. To furnish, indeed, if possible, a more clear and correct idea of the state of the said property at that time, no road of communication with the Upper Coves existed,—the public and those engaged in the lumber trade, and whose business imperatively required their presence in the Coves above *L'Ance des Mères*, being obliged at high tides either to make use of a conveyance by water to reach the last mentioned locality, or do so by going a lengthy and circuitous route over the Plains of Abraham. The road also leading from *L'Ance des Mères* to the city of Quebec, by Diamond Harbour, if such it might be named, was likewise in an exceedingly bad state and almost impassable, being, in truth, better designated by the name of a pathway than of a road.

The beach lot in question, then of inconsiderable value, subsequently underwent, upon its being taken

possession of by Mr. Laporte, great and various alterations. Among these, a road cut through the solid rock was made, at once opening an immediate and ready communication with the Coves and places above *L'Ance des Mères*; a wharf, extending in front the full length and extent of the beach, being also built, so as to prevent the high tides from flooding the road, which otherwise would have been the certain consequence. The road also from the city, passing by Diamond Harbour to *L'Ance des Mères*, was greatly improved, and extensive repairs made upon the same, at the sole and proper cost of Mr. Laporte, and with his own private and personal means; and that without his receiving any assistance whatsoever, either from the public, or in virtue of any legislative enactment appropriating a sum for that purpose, although the public in general, and chiefly those engaged in the lumber trade, were greatly benefited by such ameliorations, and the property itself also proportionately enhanced in value.\*

In the year 1827, the said beach lot, being then in the improved state just described,—and this, let it be borne in mind, effected by great labour, loss of time, and expenditure of monies on the part of Mr. Laporte,—and he having discovered that the right of property to the beach lot was legally vested in the Crown, applied by petition to Government, representing the facts of the case as above stated, and the nature of the circumstances under which it was made, the said petition being numerously signed by the

\* Subsequently, there was a sum of £1,500 currency, in all, voted at two different periods by the then Legislature of Lower Canada, in the years 1829 and 1830, (in virtue of the Provincial Statutes 9th Geo. IV. and 10th and 11th Geo. IV.) to be appropriated to the improvement of the road, and to complete that from *L'Ance des Mères* to Sillery; but which sum was expended without *L'Ance des Mères* deriving the least benefit or advantage from such appropriation by the Legislature.

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most respectable citizens of Quebec, certifying the same, and recommending the prayer thereof. The results of such application being, after the opinion taken of Sir James Stuart, (now Chief Justice of the District of Quebec, in the late Province of Lower Canada, and then Attorney General,) the institution, at the instance of the Crown, of an amicable suit at law against Jean Baptiste Laporte, the same being a petitory action, (*action petitoire*,) for the purpose of bringing the case fully before a Court of Justice, and determining, by the Judgment of a legal tribunal, as well the merits of the claims set up by the Crown, as those of all other *third parties* whose interests might stand affected by the rendering of such decision.

The suit in question having been instituted by the Crown against Mr. Laporte, the Religious Ladies of the Ursuline Convent of the city of Quebec became intervening parties thereto; and a contestation of the right of property was accordingly entered into between the Crown and the Ursuline Nuns. The requisite proof having been made upon the issue raised, and the respective parties duly heard, it was decided by a Judgment of the Court of King's Bench\* for the District of Quebec, rendered the *twentieth day of April*, 1831, that the beach lot at *L'Ance des Mères*, as claimed, was the sole property of the Crown and of none other, and thereupon wholly dismissed the pretended rights of the Ursuline Nuns to the said property.

This Judgment of the Court of King's Bench was subsequently appealed from by the Religious Ladies of the Ursuline Convent as intervening parties, their interests being opposed to those of the Crown; but for what reasons, it is impossible to say, the appeal

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\* See Appendix, No. 1.



in question remained the extraordinary period of *nine years* in the Court of Appeals, without a single move being made by the Appellants in the suit, they indeed, to judge from their proceedings, having, as it were, abandoned all idea of prosecuting the appeal in question.

In the year 1838, Mr. Laporte, during the administration of the late Earl of Durham, again presented a petition to the Government, therein drawing the attention of the Crown, as well to the prayer of his former memorial, as to the existence of the unprecedented delay which had taken place in the progress of the proceedings, and praying that the original intentions of Government in respect to this beach lot at *L'Ance des Méres*, as between the Crown and its memorialist, should, for the ends of justice, be speedily and effectively carried out, and executed by the former in favour of the latter. This petition having been referred by the then Governor (the late Earl of Durham) and Council to the Inspector General of Her Majesty's Domain in which the property was situate, for his report thereon; and the same having, in due course of time, been made, an Order in Council, based upon the said Report, and approved of by His Excellency, directed that a Lease of *twenty-one* years' duration should be granted to Mr. Laporte of the beach lot at *L'Ance des Méres*, and of which he held possession, for and in consideration of the annual rent or sum of £100 currency per *annum*, to be by that individual paid into the hands of Government during the existence of such lease, with other further onerous charges and conditions attached thereto.

This last Order in Council having been communicated to Mr. Laporte, another application was made by him to Government, respectfully representing that the terms and conditions to be imposed upon him in

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virtue of such twenty-one years' lease, should the same go into operation, were not in keeping with the original intentions of the Crown; inasmuch as a temporary, or *emphyteotic*, lease only was given in lieu of a *permanent grant*, and to receive which last, the applicant was (as he trusted he had already satisfactorily shown) fully entitled.

The Order in Council rendered upon this last application, (which was during the administration of Sir John Colborne,\* the successor in office of the late Earl of Durham,) confirmed the decree in Council, above alluded to, of the Earl of Durham, and also ordered Mr. Laporte, as a tenant by sufferance from the Crown, to pay over into the hands of the Receiver General of the Province, for the benefit of Her Majesty, all arrears of rent due for the last eight years; and forthwith directed him to accept of the emphyteotic lease in question, upon the terms and conditions therein contained, or that the lease should be given to the highest bidder in default of such acceptance.

In obedience to this last mentioned Order in Council, all back rents for the last eight years were paid by Mr. Laporte to Government, and an acknowledgment of such payment obtained. The acceptance by him of the said twenty-one years' lease, was likewise given in by Mr. Laporte to the proper law officer of the Crown; and the lease itself, in nearly a finished state, was at that time left in the hands of Mr. C. R. Ogden (then Attorney General) for completion—and, it is presumed, is still to be found in the possession and custody of his present successor in office.

At this stage of the proceedings, however, that is in the year 1839, in consequence of a remonstrance

\* Now Lord Seaton.

made by the Messrs. Frasers of Quebec, to Government, (they representing themselves as the assignees of the Ursuline Nuns,) requesting that all proceedings as to the granting of the lease to Mr. Laporte should cease, until such time as the Attorney General should have made his report upon the case, as he had been directed to do by a former Order in Council, but which had been lost sight of, proceedings were again suspended; and, after a considerable lapse of time,\* the report in question having been made, the said claims of the Ursuline Nuns, represented by the Messrs. Frasers, were, by a fresh Order in Council, declared to be set aside as unfounded.

A short period subsequent to these proceedings having elapsed, the Messrs. Frasers, to whom, as before stated, the Ursuline Nuns had disposed of their claims to the said property, and that in the face of a judgment of the Court of King's Bench declaring the beach lot in question to be the property of the Crown, caused the appeal from the said judgment already spoken of, and which had remained undisturbed for a period of nine years, to be brought up in the April term of the sittings of that Court, for the purposes of argument and decision—the results of such appeal being a judgment† rendered the thirtieth day of July, 1840, confirming the rights of the Crown to the said beach lot between high and low water-mark, the same more fully defined and described in a certain plan annexed to the report of Mr. Saxe, Deputy Surveyor, and filed in the cause.

\* The papers in connexion with the matters upon which the Attorney General was then to make his Report, including the Report of the Inspector General upon the same subject, were for a period of nearly nine months missing out of the Civil Secretary's Office; and were only forthcoming after much remonstrance and complaint made by Mr. Laporte, which fact accounts for the great delay attending the rendering of the said Report.

† See Appendix No. 2.

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The Appellants from this judgment moved in due course an Appeal to Her Majesty the Queen, and Privy Council; but the same not having been proceeded with by the Ursuline Nuns, the record was, in consequence, remitted to the Court of King's Bench, leaving the judgment in appeal thereby to be final in the case.\*

In the expectation that the progress of Mr. Laporte's case, after the various delays and proceedings above-mentioned, should no longer be retarded, he being both a heavy sufferer and a considerable loser by the same, the Government was again applied to, and solicited by him to cause some definite and conclusive measure to be adopted and acted upon for his satisfaction and advantage; and especially so, regard had to the singular and peculiar circumstances of his (Mr. Laporte's) position, the same deeply affecting his interests, and arising chiefly from the delayed fulfilment on the part of the Crown of its pledge to their memorialist.

This last memorial having been taken into consideration by the Executive Government of Canada, during the administration of the late Lord Sydenham, it was, after a most elaborate and minute investigation of the case of Mr. Laporte, decreed by an Order in Council of the eleventh of May, 1841, and by His Excellency confirmed on the eleventh day of June of the same year,† that inasmuch as the "*Government was pledged to that individual, Mr. J. B. Laporte, to give him a preference, in case of the disposal by the Crown of the beach lot in question, it was*

\* After the limited period prescribed by Statute Law, governing Appeals to the Queen and Privy Council, had elapsed, the Messrs. Frasers, by the instrumentality of the Ursuline Nuns, as Appellants, boldly attempted to revive their Appeal; but their pretensions were at once over-ruled by the Court, and declared inadmissible.

† See Appendix No. 3.

*"therein recommended that Mr. Laporte should be permitted to purchase from Government the said beach lot, extending to the ordinary depth of twenty-two feet water, and including all the ground belonging to the Crown in the lot, and that the said sale should be made on a valuation of the Commissioner of Crown Lands, to be reported to, and approved of by, His Excellency the Administrator of the Province."*

Proceedings in this procrastinated business were once more and again delayed by another memorial, addressed, not in the name of the Messrs. Frasers, but in that of the Ursuline Nuns, to Government, containing a proposal of the most extraordinary nature, namely, offering, at that advanced stage of the proceedings, to indemnify Mr. Laporte for the improvements by him made upon the said property, (already ordered by the Crown in the first place to be leased, and finally to be disposed of to Mr. Laporte at an evaluation,) on condition that the Government should sell the right of property to the Messrs. Frasers, although the Crown, to the full knowledge of these parties, was already pledged to Mr. Laporte as above mentioned.

By a further Order in Council,\* approved of by His Excellency Sir Richard Jackson, (then Administrator of the Government,) the ingenious proposal above stated to have been made by the Ursuline Nuns, but in reality emanating from the Messrs. Frasers, was not accepted of by the Crown; but it was decreed, that the Government being pledged to Mr. Laporte, the last order made should be carried into effect, and which, to quote the language of the said order, *"could be substantially done by a sale to*

\* See Appendix No. 4.

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\* The reply of Lord  
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*"Mr. Laporte, the same to be made in conformity with the said last Order in Council of the eleventh day of May, 1841."*

In consequence of this Order in Council, the Messrs. Frasers subsequently applied to Sir Charles Bagot, the late Administrator of the Province, praying His Excellency that no Letters Patent should be granted to Mr. Laporte, until such period as an answer should be given by Her Majesty's Secretary of State, (Lord Stanley,) to whom they had appealed from the said Orders in Council; and requesting, furthermore, that their memorial should be forwarded to that personage for his approval. The reply of His Excellency to this application was, that their memorial would be transmitted to the Secretary of State forthwith; but that their requisition to stay proceedings in Mr. Laporte's case could not be acceded to."\*

In the meantime the beach lot in controversy was, pursuant to the lastmentioned Orders in Council, surveyed as to the exact number of feet; and estimated by the Inspector General of Her Majesty's Domains, appointed by the Crown for that purpose, as to the value of said property, at the sum or price of two thousand one hundred pounds, current money of this Province. Reference was also made to the Trinity Board at Quebec as to the extent of deep water to be given, and Mr. Laporte ordered '*to furnish his acceptance of the sale by the Crown to him of the said property, upon the above specified terms and conditions;*' Government having refused to grant any delay whatsoever for the payment of the amount of the purchase money, although special application,

\* The reply of Lord Stanley, Her Majesty's Secretary of State, to the Memorialists, the Messrs. Frasers, was briefly and significantly this:—"*That the prayer of their Petition could not be entertained.*"



upon strong grounds, was made by Mr. Laporte for such indulgence.

There consequently remained at this time, for the completion and perfection of the said contract of sale between the Crown and Mr. Laporte, simply—the drawing of the precise boundary line between the property so disposed of by Government to Mr. Laporte and that of the Ursuline Nuns, as defined in the plan of Mr. Saxe; the fixing of the boundaries, or division lines, of the same on the south and on the north, and the extent of deep water upon the entire front of the said beach lot: so as to furnish a complete description of property, fit for insertion in the Letters Patent to be given by the Crown to Mr. Laporte, the *vendee* of the same.

These abovementioned necessary preparatory proceedings to the deed of sale, or Letters Patent, being perfected, were also, in virtue of directions given by Her Majesty's Surveyor General to Mr. Adolphus Larue, Deputy Provincial Surveyor, as to the drawing of plans, erecting boundaries, and the establishing of the division lines, likewise eventually performed and accomplished. The said plans, surveys, setting of boundaries, fixing of division lines, and all and every the proceedings relative to these matters having been so done and executed at the personal cost and expense of Mr. Laporte, as so ordered by the Crown.

It would be presumed that, after the lapse of so many years, and at this stage of the proceedings, when the executing of the Letters Patent alone remained to be done to close this transaction, that no further obstacles could possibly exist, or be raised, to prevent Mr. Laporte from becoming the proprietor of the beach lot in question. Yet, more procrastination and delays were in store for that deeply wronged and maltreated individual,—further proceedings in this

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business having ceased in consequence of an address from the House of Assembly, during the last Session of our Provincial Parliament, to His Excellency Sir Charles Bagot, the former Governor-in-chief, founded upon the report of a *Special Committee*, to which a petition, purporting to be on behalf of the Ursuline Nuns, (but in reality coming from the Messrs. Frasers,) and addressed to the Lower House, had been referred. The address, above alluded to, requested of His Excellency that all further proceedings, in regard to the disposal of the beach lot at *L'Ance des Mères* to Mr. Laporte, should be stayed and suspended by Government until the next sitting of the Provincial Legislature, and this for the purpose of enabling the Committee to report the more effectually to the House upon the merits of the application so made to that body by the Religious Ladies of the Ursuline Convent.

In consequence, therefore, of the beforementioned address on the part of the House of Assembly, the Executive Government, not willing to refuse the request of the House, has declined at this time to proceed further in the matter, although repeated applications, couched in respectful but earnest language, have been made by Mr. Laporte to the Executive, the same strongly representing to the Crown the injustice and loss likely to result and be sustained by him in case of such a measure, so injurious to his interests, being adopted by Government,—yet, nevertheless, in such state does this long pending affair rest for the present.

## REMARKS.

FROM the preceding statement, vouched for as being, in every respect, a plain and unvarnished narrative of facts, it must be evident that Mr. J. B. Laporte, the individual whose claims upon Government have been delayed in the singular and extraordinary manner as just represented, originating as it did from the scheming acts and discreditable efforts of his adversaries, in attempting to deprive him of certain property to which they had no right or title whatsoever, must, necessarily, have greatly embarrassed him in his circumstances—nay more, would most assuredly have reduced him to a state of poverty, if not utter ruin, had not a friendly hand, with a due regard to his peculiar and destitute situation, assisted and relieved him in his difficulties.

The Ursuline Nuns never did possess, at any time, any title-deeds or other documents of a description constituting them proprietors even of the land above the cliffs: although the Messrs. Frasers, (as representing these Religious Ladies,) in virtue of their rights laid claim to the beach lot as *Riparian proprietors*.

These ladies, as a religious community, in conjunction with others of the same order in this country, being civilly dead, could only possess and hold property in virtue of, what is termed in the French language, *lettres d'amortissement*, or letters patent from the Crown; the whole of the property owned by them, in that section of the Province in which they are domiciliated, being acquired in virtue of legal titles by purchase, exchange, or otherwise, and these confirmed to them by Royal authority or letters patent, issued by the Kings of France long previous to British dominion being existent in the country. Yet, the Ursuline Nuns never had titles to such land; nor, although cases of emergency required them to do so, did they ever produce them. This therefore purely imaginary right of *Riparian* proprietorship, in virtue of which claim was laid to the beach, was consequently exercised by

the Messrs. Frasers, in a show of defeat, carrying out a sentiment towards in question to

But why at subject?—have not the officers of the line Nuns) to ded and unjust feasible rights of Courts of Justice country,) already entirely vested in their pretended

Have not the Councils of the respective administrations decided, and given their claims countenance being duly placed and right—first, and then the ver-

The line of claim to themselves, in the Court of King's Bench almost incredible at least for suppression Ladies fully interested Crown as to the question, satisfied, and these proceedings interests. But the rights (*droits litigieux*) purchase, culpable intervention to the law eyes of all courts of sordid avarice this property shown

the Messrs. Frasers for the specious purpose of, not only giving a show of right to their unjust demands, but also with a view of defeating the equitable intentions of the Crown, in carrying out and completing the original designs of Government towards Mr. Laporte, by a concession of the beach lot in question to that individual.

But why at all enter here into disquisition upon such a subject?—have not ably written reports, executed by the law-officers of the Crown, already and repeatedly declared that the claims of the Messrs. Frasers (as representing the Ursuline Nuns) to the said property were and are wholly unfounded and unjust, as possessing *no titles*, and not having even *feasible rights* to the same? Have not the solemn decisions of Courts of Justice, (one of them the highest tribunal in the country,) already recorded that the right of property was entirely vested in the Crown, and overruling and dismissing their pretended claims to the said beach lot?

Have not numerous decrees and orders of the Executive Councils of the Province, approved and sanctioned by the respective administrators, who signed the same, successively decided, and given the Messrs. Frasers to understand, that their claims could not be recognised or admitted, the Crown being duly pledged to Mr. J. B. Laporte, in his character and right—first, as the *tenant* by sufferance, next as the *lessee*, and then the *vendee* of Government?

The line of conduct which the Ursuline Nuns prescribed to themselves, in allowing their appeal from the Judgment of the Court of King's Bench to remain dormant, during the almost incredible space of time stated, furnished good reasons, at least for supposing, if not believing, that these Religious Ladies fully intended to abandon their contestation with the Crown as to the right of property to the beach lot in question, satisfied, as they must have been, that the results of these proceedings could be anything but favourable to their interests. But the Messrs. Frasers, the purchasers of *litigious rights* (*droits litigieux*), and who rendered themselves, by such purchase, culpable of being parties to an act made in contravention to the laws of the land, and, moreover, odious in the eyes of all courts of justice, could not, actuated by the spirit of sordid avarice which influenced and misled them, allow that this property should elude their grasp; but, as the represen-

tatives of the Religious Ladies of the Ursuline Convent, have, not for *commercial*, but for *speculative* purposes of the most reprehensible description,\* attempted, by the exercise of every means within their power, and these anything but of the most honorable caste, throughout this long pending business, to wrest from Mr. J. B. Laporte, under the cover of fictitious and pretended rights, that property which his personal industry and means, combined with circumstances, had solely made and rendered valuable, at once sacrificing every principle of rectitude and justice for the lucrative objects of barter and profit.

The interest, therefore, which the Religious Ladies of the Ursuline Convent and the Messrs. Frasers had in the beach lot at *L'Ance des Mères* ceased long since to exist. The Messrs. Frasers having, in the face of a Judgment of the Court of King's Bench, rendered the 20th day of April, 1831, declaring the right of property to the said beach lot to be solely vested in the Crown, purchased the same from the Ursuline Nuns; and the said Messrs. Frasers having, also in turn, as unscrupulously and in defiance of a second judgment rendered by the Court of Appeals, the 30th day of July, 1840, sold out and disposed of their pretended rights to the said property to an individual known by the name of Lampson, on the 4th day of November, 1840, although, in all applications since made to the Crown on the subject, for reasons apparently unaccountable, or at best known to themselves, not only the name of the Messrs. Frasers but also that of the Ursuline Nuns has been made use of, notwithstanding that both of these parties had previously divested themselves by their own acts and deeds of all right, title, claim, and interest in and to the property in question.

As regards the application made by the Ursuline Nuns on behalf of the Messrs. Frasers to the House of Assembly,

\* Subsequent to the Judgment rendered in Appeal, in the suit of the Crown against Laporte, and the Ursuline Nuns intervening parties, the Messrs. Frasers, then the representatives of the Nuns by purchase, in virtue of a certain Deed or Instrument of Sale, executed before one Mtre. Parent and Colleague, Notaries Public at Quebec, on the 4th day of November, 1840, sold out and disposed of all their rights and claims which they had, or might have, to the Beach Lot at *L'Ance des Mères*, to one William Lampson—the said Deed of Sale enregistered at Quebec, the 30th July, 1842.

were it not that Mr. Laporte is the only real sufferer by the delay incurred—indeed, this consideration apart, most willingly would he court such a proceeding, a fair and full disclosure of all the facts connected with the case being that which Mr. Laporte would chiefly ask. A thorough investigation of the proceedings, exposing the line of conduct systematically pursued throughout by the Messrs. Frasers, in endeavouring, by the exercise of every ingenious device at their command, without a due regard to the nice distinctions of right and wrong, to dispossess and deprive Mr. Laporte of property which was to constitute, in after life, his only means of subsistence and support, is what the latter, under other circumstances, would most earnestly and anxiously desire.

It is, however, to the Executive Government of the Province that Mr. Laporte looks up for due redress, for ample and long delayed justice, and for the full and perfect confirmation of his rights. Mr. Laporte was the first of Her Majesty's subjects, in this part of the Province, to discover and make known to Government that the right of property to all beach lots in general, on both sides of the river St. Lawrence, north and south, was vested in the Crown, and that such was situate within its domain. In the case of the Crown against Laporte, the question (then a novel one) as to the rights of Government in this respect, was originally tried, discussed, and determined. In consequence, innumerable applications, by divers of Her Majesty's subjects, have been made since that period to Government for Letters Patent to beach lots, and the revenues of the Province have been thereby considerably enriched. Yet singular and unprecedented as it may appear, Mr. Laporte is the only party-applicant to whom Letters Patent have not been granted.

In the foregoing representation of this peculiar case, it will be seen that no spirit of complaint is in any way manifested against the Government. Yet, as a loyal and true subject of Her Majesty, as being in this instance the party sufferer, and his interests made the sacrifice, Mr. Laporte would respectfully but firmly represent, that the extreme liberality and (as events have shown) misplaced indulgence evinced by the Government towards the Messrs. Frasers, in the course of these proceedings, not only unquestionably gave rise to the

No. 1574.

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# APPENDIX.

## No. I.

PROVINCE OF LOWER CANADA, }  
DISTRICT OF QUEBEC.

In the King's Bench,

The twentieth day of April, 1843.

DOMINUS REX,

vs.

JEAN BAPTISTE LAPORTE, of the Parish of Quebec, in the County of Quebec, in the District of Quebec, Yeoman.

And

DEFENDANT,

The said JEAN BAPTISTE LAPORTE,

PLAINTIFF, *en garantie*,

vs.

The Religious Ladies of the Ursuline Convent, residing in the City of Quebec, in the County of Quebec, and the District of Quebec, in their said Convent,

DEFENDANTS, *en garantie*, and intervening party.

The Court having heard the Attorney General on behalf of our Sovereign Lord the King, and Mr. Caron, Attorney for the Ursuline Nuns, as *garants formelles* of the above named Jean Baptiste Laporte, upon the issues raised as well upon the exception *peremptoire en droit perpétuelle* as upon the *défense au fonds en fait*, having also seen and examined the several exhibits and proofs of record, and the figurative plan of Mr. William Saxe, sworn Surveyor, drawn in obedience to the Interlocutory Judgment, rendered in this cause on the fourth day of June, one thousand eight hundred and thirty, and filed therein on the second day of October following, and having maturely deliberated upon the whole—It is considered and adjudged, inasmuch as the tract and parcel of ground and beach mentioned, and set forth in the said information of the said Attorney General, and described as follows, that is to say:—"A certain tract or parcel of land, situated in the Lower Town of Quebec, at a place called "L'Ance des Mères, containing five arpents, eight feet, French measure, in front, by about seventy feet and upwards in depth, extending to the foot of "Cape Diamond, bounded in front by low water mark, on one side to the "North by land in the possession of Alexander Munn or his representatives, "on the other side to the South West, by land in the possession of John "Saxton Campbell, and in the rear by Cape Diamond" forms no part or parcel of the ground sold by one Duquet to the said Ursuline Nuns, by Deed, before Becquet, Notary Public, and witnesses, on the twelfth day of March, one thousand six hundred and seventy-one, and subsequently confirmed to them by the Intendant, that our said Lord the King is the proprietor thereof.

And it is therefore further considered and adjudged, that the said Jean Baptiste Laporte do, within fifteen days of the service upon him of the present Judgment, desist from, quit, and abandon, and after that delay that he be removed from the possession and occupation of the tract or parcel of ground and beach herein before described, and that the same be rendered and delivered up to our said Lord the King; and it is further considered and adjudged that our said Lord the King do recover his costs from the said Jean Baptiste Laporte.

PERRAULT & BURROUGHS, P. B. R.



## No. II.

PROVINCE OF }  
LOWER CANADA. }

## Court of Appeals,

The 30th day of July, 1840.

The URSULINE NUNS of Quebec,

APPELLANTS,

and

The ATTORNEY GENERAL, *pro Regina*,

RESPONDENT.

The Court having heard the parties by their Counsel, examined the record and proceedings, and deliberated thereon. It is considered that inasmuch by the report of the survey of William Saxe, referred to in the Judgment of the Court below, of the twentieth day of April, eighteen hundred and thirty one, it appears that there is a space between the Cape Diamond and high water mark in the River St. Lawrence, which the Crown cannot claim as the soil of the tide-water, and whereof the Appellants have been legally in possession from time immemorial, under titles which it was not the object of the information to try, the Judgment of the Court below, has, by awarding all the depth of land from low watermark to Cape Diamond, adjudged to the Crown more than ought to have been held and considered as its property, and the Judgment of the Court below is therefore in this respect reversed:—And this Court giving the Judgment which the Court below ought to have rendered, It is adjudged and declared that all the land between low water mark, of the premises described in the said Judgment, and the place designated in the plan of William Saxe, therein referred to by a line with the letters g, h, i, k, l, and a, as that at which the tide did rise and would again rise but for the obstacles in its way, shall be held to be the property of our Sovereign Lady the Queen, in right of Her Sovereignty, as the soil of tide-water, and therefore it is considered that the said Jean Baptiste Laporte, do within fifteen days from the service of the present Judgment, desist from, quit and abandon the same, and that in default thereof, he be removed of the possession and occupation of the said tract and parcel of land and beach, as herein awarded to Her Majesty in due course of law. The Court awarding no costs to either party, either in this Court or in the Court below. And it is ordered that the Record be remitted to the Court below.

Certified, E. DESBARATS, C. C. A.

## No. III.

EXTRACT FROM A REPORT OF A COMMITTEE OF THE WHOLE COUNCIL, DATED THE 11TH MAY, 1841, AND APPROVED BY THE GOVERNOR GENERAL IN COUNCIL, 11TH JUNE, 1841, IN SO FAR AS THE SAME RELATES TO THE BEACH LOT AT *L'Ance des Mères*, CONCEDED BY THE CROWN TO MR. JEAN B. LAPORTE.

"The Committee of Council have had under consideration the several cases referred to, regarding claims to beach lots at Quebec, called *L'Ance des Mères*, and have agreed upon the following Report.

"The property called *L'Ance des Mères* is situated on the River St. Lawrence, above the Mariners' Chapel at Quebec, and extends to Wolfe's Cove above that city.

"According to a Report of the Inspector General of the Queen's Domain, it may, in reference to the present proprietors and claimants, be divided into five sections, &c. &c. :—

"The third lot or section of the Crown property at *L'Ance des Mères*, consists of 908 French feet in front. It was originally leased by the Ursuline Nuns to Messrs. Coltman, on the 21st October, 1808, for 30 years; the unexpired term of which lease came into the possession of J. B. Laporte, by assignment from Messrs. Coltman in 1816. During the continuance of this term, Mr. Laporte being desirous of obtaining a renewal of the lease, and finding some difficulty with the Ursuline Nuns, inquired into the title, and gave information to

Government, which suit against him a

"The Crown mark, but also from sued, called upon to suit, claiming low-

"Judgment in given in the Court appealed; and in J. garded the ground the Crown its title

"It is remarkable high water mark, a veyor, who was employed of the Court and was not intended proceedings by any evidence survey. This line cabins erected on the

"The Ursuline N appeal from this Jud sary security, forfeit the right to insist upon appeal from it, and i

"On the 7th Mar for a term of years, a he should have the fir annum for eight prev orders were issued to pletion has been prev

"Messrs. J. and J. first Judgment in favo the Ursuline Nuns, of tending from thence t the ground in litigation

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"The Committee an acquire a title to proper ty being in litigation sideration of the Govern

"They are also of o for all further interven of the property, without spectfully recommend, t extending to the ordinar belonging to the Crown out compromising the Se ge under the Ursuline N Commissioner of Crown lency."

Montreal, 11th May, 1841.

Government, which induced Her Majesty's Attorney General, to commence a suit against him as the tenant in possession.

"The Crown claimed in this suit, not only the beach up to high-water mark, but also from thence up to Cape Diamond; and Laporte, being thus sued, called upon the Nuns as guarantees of his title: they intervened in the suit, claiming low-water mark as the boundary of their estate.

"Judgment in favour of the Crown, to the full extent of its claim, was given in the Court of King's Bench; against this Judgment the Ursuline Nuns appealed; and in July 1840, Judgment was given against the Crown, as regarded the ground in rear of high-water mark, and establishing in favour of the Crown its title to the ground between high and low water mark.

"It is remarkable, that in the Judgment, the Court of Appeals adopted as high water mark, a line drawn on a plan made by Mr. Saxe, a Deputy Surveyor, who was employed to make a figurative plan of the locality for the assistance of the Court, which line is in fact below the true high water mark made, and was not intended to establish its exact locality, or supported in the proceedings by any evidence, shewing that it was a true line ascertained by actual survey. This line runs in an irregular manner, and cuts through houses and cabins erected on the Cape side of the road to the Coves.

"The Ursuline Nuns and the Crown have both declared their intention to appeal from this Judgment; but the former having failed to put in the necessary security, forfeited their right to appeal, and the Crown has, therefore, the right to insist upon the Judgment as binding, or, on the other hand, to appeal from it, and insist upon a full extent of its first claim.

"On the 7th March, 1839, it was determined, that this lot should be leased for a term of years, and in consideration of large outlays made by Laporte, that he should have the first lease of 21 years, on paying arrears of rent at £10 per annum for eight previous years, and the new rent being £100 per annum, orders were issued to the Attorney General to prepare this lease, but its completion has been prevented by the following circumstance.

"Messrs. J. and J. M. Fraser, while the suit was in litigation, and after the first Judgment in favour of the Crown, procured a grant in perpetuity, from the Ursuline Nuns, of the whole ground to the summit of the Cape, and extending from thence to low water mark; thus assuming to acquire a title to the ground in litigation, under colour of authority from the Messrs. Fraser, Mr. Wm. Lampson has taken violent possession of the beach lot within a few days past. The Committee are respectfully of opinion that it would be inexpedient for the Government to continue the litigation. They also respectfully reiterate their opinion, that the plan of leasing for years is inexpedient. The Committee are further of opinion, that the Government is pledged to Laporte to give him a preference in case of the disposal of the beach lot.

"The Committee are also of opinion, that Messrs. Fraser by assuming to acquire a title to property in opposition to the rights of the Crown, that property being in litigation, has thereby acquired no claim to the favorable consideration of the Government.

"They are also of opinion, that it would be prudent, to avoid the necessity for all further intervention of the Crown in the matter in litigation, to dispose of the property, without guarantee of title. The Committee, therefore, respectfully recommend, that Mr. Laporte be permitted to purchase the beach lot extending to the ordinary depth of 22 feet water, and including all the ground belonging to the Crown in the lot, without reference to the boundary, but without compromising the Seigneurial rights of the Crown, on the property held by the Ursuline Nuns, and that this sale be made on a valuation of the Commissioner of Crown Lands, to be reported to and approved by your Excellency."

Certified,

G. H. RYLAND.

Montreal, 11th May, 1841.

## No. IV.

EXTRACTS FROM THE COPY OF A REPORT OF A COMMITTEE OF COUNCIL OF THE 13TH OF DECEMBER, 1841, APPROVED BY HIS EXCELLENCY, THE ADMINISTRATOR OF THE GOVERNMENT, ON THE MEMORIAL OF THE URSULINE NUNS AT QUEBEC.

"The Committee of Council have had under consideration the Memorial of the Society of Ursuline Nuns at Quebec, praying the re-consideration of an Order in Council, approved by His Excellency, the late Governor General, on the 11th of June, 1841, relative to the disposal of a beach-lot of land at *L'Ance des Mères* at Quebec.

"The Committee have had also under consideration a proposal made by the Hon. Edward Caron, on behalf of the ladies of the Ursuline Convent, representing that they are the guaranties of a title to the premises in question, which title it appears was made by them in perpetuity, reserving a rent, the tenants being Messrs. J. and J. M. Fraser, of Quebec, and offering to indemnify Mr. Laporte, to whom a lease of the premises was ordered by the Executive Government of Lower Canada, in consideration of certain improvements, for these improvements, on condition that the Crown would sell its right to the Messrs. Fraser.

"In the disposal of the other beach-lots at *L'Ance des Mères*, the Council were enabled to put an end to all litigation and dispute about boundary, by ordering sales of the beach lots to the persons claiming to be Riverian proprietors or holders of the ground immediately in rear of the lands of the Crown, forming part of the bed of the river, or on its shore, where the disputed boundary was situate; but in the present case, a lease has been ordered to Laporte, and the land in rear has been, as before stated, conveyed to the Messrs. Fraser by the Ursulines, so that it is not in the power of the Government to sell the beach-lot to the owners of the land in rear, without invalidating the Order in Council in favour of Laporte."

"The Committee in the Order now under re-consideration, finding the Government under a pledge to give a lease to Laporte, and finding also that by the Judgment of the Court of Appeals, and the act of the Ladies of the Ursuline Convent, the property unfortunately severed, and the questions of boundary still open, and tenants under the Nuns still insisting upon their right to the land down to low-water mark, and Laporte, or his assignee, still insisting on the right to the shore up to the Cape; by way of carrying into effect the Order in Council in favour of Laporte, so far as it could be done, and for the purpose of leaving the parties interested to contest their own rights without further litigation on the part of the Government, advised a sale to Laporte of all the beach lot, being the property of the Crown, wherever its boundary might be found to be; and the Committee understand the proposal of Mr. Caron, on the part of the Ursuline Nuns, to be made with the object of forcing a compromise which would avoid further litigation, and prevent the severance of the beach lot, bounded by high water-mark from the land in rear, which severance would be obviously to the detriment of both properties."

"But, under present circumstances, the Committee do not feel at liberty to cancel the order in favour of Laporte, or to force him or his assignee to part with any right which they may acquire under it—they think it right that the Government, at least, should be free of all further legal contests; and they see no other means of producing this result than by carrying into effect the last order, which may be substantially done by a sale to Laporte, or his assignee, of the beach lot, bounded on the land side by the property of the Ursuline Nuns or their tenants, wheresoever the boundary may happen to be,—the sale to be made in conformity with the last Order in Council."

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